

SENATE BILL 1640

By Pody

AN ACT relative to the levy of a privilege tax on the occupancy of lodgings and other accommodations by transients for consideration in Smith County.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. As used in this Act, unless the context requires otherwise:

(a) "Consideration" means the consideration charges, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property, and service of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged or received from any person;

(b) "Hotel" means any structure, or any portion of any structure, which is occupied or intended or designed for occupancy by transients for dwelling, lodging, or sleeping purposes for a consideration, and includes any hotel, inn, tourist cabin, campground, bed and breakfast, or motel;

(c) "Occupancy" means the use or possession or the right to use or possession of any room, lodging, or accommodations in a hotel for a period of less than thirty (30) continuous days;

(d) "Operator" means the person operating the hotel whether as owner, lessee, or otherwise;

(e) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental unit other than the United

States or any of its agencies, or any other group or combination acting as a unit to include the State of Tennessee;

(f) "Tax collection official" means the County Clerk; and

(g) "Transient" means any person who exercises occupancy or is entitled to occupancy of any rooms, lodgings, or accommodations in a hotel.

SECTION 2. Smith County is hereby authorized to levy a privilege tax upon the privilege of occupancy in any hotel by a transient in an amount not to exceed five percent (5%) of the consideration charged by the operator. The tax imposed is a privilege tax upon the transient occupying such room or other accommodation and is to be collected and distributed as herein provided. The rate of the tax may be modified by the county legislative body subject to the five percent (5%) limitation.

SECTION 3. The tax shall be added by each operator to each invoice prepared by the operator for the occupancy of his hotel. Such invoice must be given directly or transmitted to the transient, a copy thereof filed by month and retained by the operator as provided in Section 7 hereof.

When a person has maintained occupancy for thirty (30) continuous days, he shall receive from the operator refund or credit for the tax previously collected from or charged to him, and the operator shall receive credit for the amount of such tax if previously paid or reported to the County.

SECTION 4.

(a) The tax hereby levied shall be remitted by all operators who lease, rent, or charge for any rooms or accommodation space in a hotel to the County Clerk not later than the twentieth (20th) day of each month next following such collection from the transient. The operator is required to collect the tax from the transient at the time of the presentation of the invoice for occupancy, whether prior to, during, or after occupancy, as may be the custom of the operator. The obligation to the county entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the County Clerk for collecting the tax, the County Clerk shall be allowed five percent (5%) of the amount of tax remitted by the operators.

SECTION 5. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator, or that it will be added to the rent, or that, if added, any part will be refunded.

SECTION 6. Taxes collected by an operator which are not remitted to the County Clerk on or before the due dates are delinquent. An operator shall be liable for interest on such delinquent taxes from the due date at a rate of twelve percent (12%) per annum, and in addition for a penalty on such taxes of one percent (1%) for each month or fraction thereof that such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted. Willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed may result in the imposition of a civil penalty not to exceed five hundred dollars (\$500.00) upon a finding of such willful refusal by a court of competent jurisdiction. Any civil penalty imposed shall be applicable to each individual transaction involving lodging services paid by a transient to the operator in those cases when the operator fails or refuses to pay the tax payable to the County Clerk.

SECTION 7. It is the duty of every operator liable for the collection and payment of any tax imposed by this Act to keep and preserve for a period of three (3) years all records necessary to determine the amount of such tax, which records the tax collection official shall have the right to inspect at all reasonable times.

SECTION 8. In administering and enforcing the provisions of this Act, the tax collection official shall have as additional power the powers and duties with respect to collection of taxes provided in Tennessee Code Annotated, Title 67, or otherwise provided by law.

SECTION 9. The County Clerk shall faithfully account for and make proper reports of all funds paid to and received by such Clerk for the privilege tax.

SECTION 10. The proceeds of the tax shall be paid over to the County Clerk and placed in the county general fund to be appropriated by the county commission for the public safety and tourism.

SECTION 11. The privilege tax levied by this Act shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 12. If any clause, sentence, paragraph, section, or any part of this Act shall be held or declared to be unconstitutional, it shall not affect the remainder of this Act notwithstanding the part held to be invalid, if any, and to that end the provisions of this Act are declared severable.

SECTION 13. This Act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Smith County. Its approval or nonapproval shall be proclaimed by the presiding officer of the legislative body and certified by such officer to the Secretary of State.

SECTION 14. For the purpose of approving this Act as provided in Section 13, it shall take effect on becoming a law, the public welfare requiring it. For all other purposes, it shall take effect on the first day of the month following approval as provided in Section 13.